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OFFICE OF PETITIONS

In re Application of
LUYTEN

Application No. 10/069,495

Filed: February 20, 2002

Attorney Docket No.

JAB 1526USNP

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: DECISION ON PETITION
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This is a decision on the petition under 37 CFR 1.137(b), filed March 27, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed February 28, 2006, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on April 29, 2006. See MPEP 1215.04. A Notice of Abandonment was mailed on March 6, 2007.

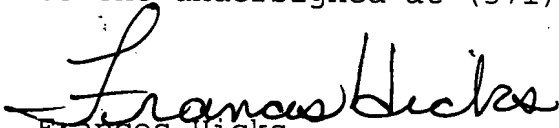
The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the required reply in the form of a continuing application (Application No. 11/691,714, filed March 27, 2007, the same date as the filing of the present petition to revive), (2) the petition fee of \$1,500, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely file a proper reply following the filing of the Notice of Appeal on February 28, 2006 is accepted as being unintentionally delayed.

The petition is not accompanied by a statement of express abandonment in favor of the filing of a continuing application. In order to facilitate action, the petition to revive should

include reference to the filing of a continuing application and a letter of express abandonment conditional upon the granting of the petition and of a filing date to the continuing application. Nevertheless, in view of the statement that the reply is the filing of a continuing application, this will be construed as a request to expressly abandon this application in favor of the granting of a filing date to the continuing application. Accordingly, this application is revived solely for the purpose of continuity with continuing Application No. 11/691,714, filed March 27, 2007. As continuity has been established by the revival of this application, this application is again abandoned in favor of the continuing application. If this was not the intent of applicant, the Office should be promptly notified.

In view of the express abandonment of this application, no further action herein is required.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

A handwritten signature in cursive script, reading "Frances Hicks".

Frances Hicks
Petitions Examiner
Office of Petitions